

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

ANTHONY BONNER,	:	
	:	
Petitioner.	:	
	:	
VS.	:	NO. 5:15-CV-69-MTT-MSH
	:	
Warden EDWARD PHILBIN,	:	
	:	
Respondent.	:	
	:	

RECOMMENDATION OF DISMISSAL

Petitioner filed the instant Petition (ECF No. 1), construed as a petition for writ of habeas corpus under 28 U.S.C. § 2254, on March 5, 2015. Because the Petition was headed “In the Superior Court of Mitchell County, State of Georgia,” the Court ordered Petitioner to refile on the proper forms within twenty-one days of March 9, 2015. Order, Mar. 9, 2015, ECF No. 4. No response was filed with the Court. Consequently, on April 6, 2015, the Court ordered Petitioner to show cause why his Petition should not be dismissed. Order to Show Cause, Apr. 6, 2015, ECF No. 6. Petitioner responded on April 16, 2015, saying that he had intended to file his Petition in the Superior Court of Mitchell County, and that he does not wish for his mistake in filing it in this Court to affect his ability to file a proper habeas petition under § 2254 if necessary following the exhaustion of his state habeas remedies. Resp. to Court Order, ECF No. 7.

The Court construes Petitioner’s latest filing as a motion for voluntary dismissal of his case with permission to refile a new § 2254 petition, if necessary, following the

conclusion of his state proceedings. So construed, Petitioner's motion should be granted, and his Petition should be dismissed under Rule 41(a) of the Federal Rules of Civil Procedure without prejudice to his right to file a new petition for writ of habeas corpus under 28 U.S.C. § 2254 in the future. To be clear, Petitioner's filing of this Petition shall not constitute an initial petition under the Rules Governing Section 2254 Cases, and any future petition filed on his behalf under § 2254 will not be subject to the requirements for second or successive petitions under Rule 9 of the Rules Governing Section 2254 Cases.

Pursuant to 28 U.S.C. § 636(b)(1), Petitioner may file written objections to this Recommendation, or seek an extension of time to file objections, within fourteen (14) days after being served with a copy hereof. The District Judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error. Petitioner is hereby notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 17th day of April, 2015.

/s/ Stephen Hyles
UNITED STATES MAGISTRATE JUDGE